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90-1500

FILED
FEB 25 1991
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

HARVEY H. TODA, PETITIONER

V.

CITY AND COUNTY OF HONOLULU,
A CORPORATION, RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

HARVEY H. TODA, pro se
1363 Hoowali Street
Pearl City, HI. 96782
(808) 456-1328

Pro se for Petitioner

QUESTION PRESENTED

1. Under an "Ex Parte" request to "purchase time away from individual needs" or Whether Rules 12, 41 and 56 of the Federal Rules of Civil Procedure, can be filed by Corporation Counsel on 1-5-90, stopping the Case as involved?

2. The law allows interview of people or employees, but their time must be accounted for.

3. Though those not interviewed Their given money was returned. But 3 persons as interviewed cost $30 each person, or $90.00 in all. Only $80.00 for the cost was requested but unpaid.

4. If $90.00 as requested by Petitioner is NOT PAID, then the RIGHTS to interview people or employees for DISCOVERY PROCEEDINGS is still in order.

HARVEY H. TODA,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU
A CORPORATION,

Respondent.

MOTION FOR LEAVE TO PROCEED IN PRO SE

The petitioner, HARVEY H. TODA, asks leave to file the attached petition for a writ of certiorari with payment of fees as requested, because no lawyer could be obtained for this cause.

Harvey H. Toda

HARVEY H. TODA,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

AFFIDAVIT IN SUPPORT OF A MOTION
FOR LEAVE TO PROCEED IN PRO SE

I, HARVEY H. TODA being first duly sworn, depose and say that I am the petitioner in the above entitled case and am unable to obtain a lawyer. As pro se I will pay the required fees and costs as requested; and that I believe I am entitled to redress.

I am unable to type as good as others, but will do the best I can.

I may not spell the words as good as others, but will do the best I can.

Petitioner has previously been granted leave to so proceed in both the U.S.District Crt. of Hawaii, and U.S.Crt. of Appeals for the Ninth Circuit, as pro se.

Because of my age at 73 years, I am unable to answer questions as promptly as before, but I do have a Lawyer from Honolulu, whose name is:

William Tagupa, Att. at law
Off. of: Stanley Yamada,
Att. at Law, Suite 2504,
Century Square
1188 Bishop Street
Honolulu, Hawaii 96813
Telephone: (808) 523-3968

who stated he will do the CRAL ARGUMENT, pro hac vice, for FREE, when case is DOCUMENTED for a writ of certiorari.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Harvey H. Yada

Subscribed and sworn to before me this 19th day of March, 1991.

Notary Public
State of Hawaii

My commission expires: 10/25/92

JENNIFER M. L. ABIVA
NOTARY PUBLIC
STATE OF HAWAII

HARVEY H. TODA,

Petitioner,

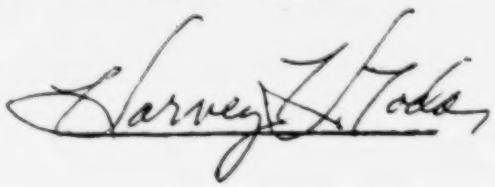
v.

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

MOTION FOR LEAVE TO PROCEED UNDER Rule 19 PROCEDURE ON A CERTIFIED QUESTION

The petitioner, Harvey H. Toda, asks leave to file a declaration relative to the above claim.



HARVEY H. TODA,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

DECLARATION IN SUPPORT OF PROCEDURE ON A CERTIFIED QUESTION

Relative to this question under Rule 19.3, 19.4, and 19.5, brief will be made upon approval.

Please extend 45 days for the completion of briefs under 19.5 if accepted without further statement.

Since the law allows the interview of employees of the government, whether they are doing what is assigned or is it personally because he has to get something from Petitioner?

Counsel cannot stop the case ex parte unless purchase is made of the cost.

Harvey H. Toda

HARVEY H. TODA,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

APPEARANCE

CITY AND COUNTY OF HONOLULU,
A CORPORATION

Ronald Mun 911
Corporation Counsel
~~Jane Howell 1142~~ DIANE KAWAUCHI
Deputy Corporation Counsel
City and County of Honolulu
Honolulu, Hawaii 96813
Phone: (808) 523-4620

Attorneys and Counsel for
Corporation

HARVEY h. TODA,

Petitioner,

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

SUBPOENAED REQUESTS

Diane T. Kawauchi, formerly Deputy Corp. Counsel for Tax Appeal Court #2485, that Petitioner should be reimbursed the money as taxed.

Assessor Kenneth Goto, stated he was advised to tax the same premises, as before, for res.

Assessor Wayne K. Kaneko, gave 1987 Valuation of $213,664, for upzoned partial of prop. The Court designated $89,586, Val.

Stenno Geogette Wong, stated she is not an Assessor, but advised to make requested Tax of $700.82, for the 6 months of Jan. 1, 1987 to June 30, 1987.

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

HARVEY H. TODA,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,
A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner HARVEY H. TODA, respectfully prays that a writ of certiorari issue to review the judgment and opinion as FILED on Jan. 23, 1991 by Cathy a Catterson, Clerk, U.S. Court of Appeals.

I. Opinion Below

The memorandum opinion of the Court of Appeals is attached as

Appendix A-1 & A-2, for the Ninth Circuit 90-15483 and DC Civ. 89-00858 DAE.

However the "MOTION FOR SUMMARY JUDGMENT AND FOR DISMISSAL OF COMPLAINT" Dated Jan. 5, 1990 by Deputy Corporation Council Maria C. Avinante-Tanaka, see B-1 & B-2, of Appendix, though informed to purchase cost of $80, but refused and made an "ex parte" motion.

II. Jurisdiction

Though the Appeal of Summary Judgment, in the U.S. D.Crt.of HI. David A. Ezra, Dist. Judge, Presiding, as submitted on December 7, 1990, Circuit Judges FARRIS, HALL, and KOZINSKI, case was AFFIRMED.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254 (1), (3) (June 25, 1948, Ch. 648, 62 Stat. 928.)

III. CONSTITUTIONAL PROVISION

Partial Provision of:

Amendment 1

; or abridging the freedom of speech,

Amendment VII

the right of Trial by a Jury,

Amendment XIV

Section I.

; nor shall any State deprive any person of life , liberty, or property, without due process of Law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT 5

, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

IV. STATEMENT OF FACTS

a. About October of 1983, when undersigned appeared at the Land Use Division for a house PERMIT was refused--in that the residential property was now a PRESERVATION area.

b. The tax map key, held by the City and County of Honolulu was 9-9-19: 01, at the end of Welelau Place, Aiea Hts., Aiea, Hi.

c. Instead of changing the tax it remained the same, and was paid as taxes required payments.

d. Since no action was taken to lessen the taxes, an APPEAL was initiated at the Small Claims Court, but taxes were lessened within the jurisdiction of the CLAIM, from July 1, 1984 to June 30, 1985 to $189.54, 1-yr. taxes. Taxes remained same for prior case.

e. TAXES TAKEN AFTER THE FACT. Refunds taken but unpaid to owner from Dec. 23, 1982 till June 30, 1983, was $261.97.

f. TAXES TAKEN AFTER THE FACT. "Compromise" payments due but unpaid to owners from July 1, 1983

to June 30, 1984, was $303.89 with a Valuation of $86,209, was unpaid.

g. TAXES TAKEN AFTER THE FACT. Jurisdiction as given under d. was paid and compromised with owners. However, the Small Claims Court stated they could not go beyond their jurisdiction.

h. The difference of the REFUND under e. was $261.97 minus 94.77 is $167.20, and should have been paid-off after 3-years, without prejudice.

The difference of the COMPROMISE under f. was $617.78 minus $189.53 and is $428.25, and should have been paid-off after 3-years, without prejudice.

i. Discovery: At the Tax App. Court #2485, Summary Judgment hearing on 1-15-88, Dep.Corp. Counsel Diane Kawauchi Stated to Court before the Honorable Robert G. Klein that:

On Page 19, Lines 14 to 21, states:

The Court: This is what I'm talking about. Mr. Toda, you're going to sit there and you're

going to tell me you paid the same taxes for preservation property that you did for residential?
Mr. Toda: Right.
The Court: Is that correct?
Ms. Kawauchi: Yes, it is.
j. With KNOWLEDGE, the City and County of Honolulu, a corporation, did fail by law to REFUND and COMPROMISE the excess taxes as paid, this I believe it is a fraud, and time to return same without prejudice, has gone by.
k. An "ex pose facto" provision of the Article 1, Section 9,"No ex post facto Law shall be passed." and Section 10, "No State shall enter into any ex post facto Law, or Law impairing the Obligation of Contracts, "
1. Under the ADMISSION of j. the first portion of truth is completed.
Discovery: On 8-3-84 interview was made with Chief George Uyema, Wastewater Division, Dept. of Public Works. He stated that he told no one. He also stated that the Board of Water Supply approved a

pumphouse and sewage-line within the Sunset View Lots area dated 1-30-75, that, was signed by the Chief Engineer, S. Kawakami. This was turned over to Petitioner on October 1989. There was no public hearing on this matter. Discovery obtained in his Affidavit of Nov. 1987, that the pumphouse will not be made at Petitioner's lot. Deputy Corp. Counsel soon after Nov. 1987 that the Board of Water Supply stopped the Ord. 86-66 for a Budget Request of $75,000 as needed for the pumphouse and sewage line earlier request. The wastewater sewage-line may run at another area, but not given at this time.

Discovery of Raymond Yamashita in AFFIDAVIT received Nov. 1987. He had no public hearing. Under 4. he designated 9-9-19: 01 the Primary Urban Center to preservation, because the property had an existing residential was vacant and was steeply sloped. With the above statement, the City Council created Ord. 81-79.

Misdemeanor, penalty missing: Sec. 13-115 Penalties, did not have this. Also under Sec. 16-115, Inconsistent Ordinances,.... .... shall remain in full force until such action has been taken. Notification was not made, to Owner-Petitioner. The revised ordinances also continued under Ord. 82-62. There was no Notification. "On due-process" and "no equalization" The Petitioner failed to obtain notification as due, through Amd. 14, U.S.Const. In Summary Judgment trial of 1-15-88, complaint made November 1986 in that, on Ord. 86-96 was used to deny Petitioners right to receive overpayment of taxes, it was not paid, as it was without prejudice as money returned. Counsel did not wish to return this amount. Assessor Mr. Kenneth Goto stated he gave the same charges for Preservation as he did for Residential, as he was advised to. "Refunds" of $261.97 residential was again charged for Jan. 1, 1983 to June 30, 1983. The Bd.

of Review Stated their jurisdiction ended at $94.77 every 6 months. The difference of Jan. 1, 1983 to June 30, 1983, is, $261.97 minus $94.77, is the difference of $167.20 not returned to Petitioner.

With change to Preservation, Mr. Goto stated he still took the same amount as residential, the difference of $607.78 minus $189.54 is a difference of $418.24 of the preservation not returned to the Petitioner.

The of valuation of 93,106 was changed from residential to preservation of $28,078 Valuation, and tax continued at $94.77 every 6 months, for preservation.

Downzoning now changed to partial UPZONING, and excessive taxes taken. Assessor Wayne K. Kaneko set Valuation of TOTAL at $213,664. With Appeal made to the Tax Appeal Court #2485, Judge Klein of Trial 1-29-88, gave Petitioner 2-exemptions and a cost of $89,586 Valuation, for Jan. 1, 1987 to June 30, 1987, the Valuation for 1987 Petitioner's Appeal. Taxes at $293.84. The

difference of $700.82 and 293.84 is $406.98 not returned to Petitioner. However, the topographical map did indicate slopiness, nor did the court state no exemptions as marked within the Field Ledger's Book of assessor, and discarded when the Petitioner asked Assessor. He stated in Trial of 1-29-88 that he did not know of how to drop off the exemptions, so he did it by his own feelings, in violation of the revised ordinances. He did not know of the Water-easement and appurtenance, and so did not give it much thought.

The AWARD of 15% water-easement and 50% No Pass Zone, exemptions, made Petitioner Appeal for exemptions as requested.

MISPLACEMENT: As this formal Appeal is made, if it was in error, then it should be corrected. Georgette Wong stated that she was advised to make the report, as she is a STENNO, not an assessor. Thus she was notified that errors were made. The Petitioner claims that

for 1987, "the Court" on 1-29-88 Judge Klein, did designate$89,586, for Valuation of 1987, instead of $213, 664 as assigned by Assessor Wayne Kaneko. By Law, "the Court" amount under T.A.C.#2485, is the fact as adjusted.

Though first half of 700.82 was taxed, the 2nd half of tax as paid was $293.84. This has been increased to 700.82 and taxed again.

Because of the overpayment of tax of $1401.64 plus the $293.84 a tax total of $1695.48 was taxed. "The Court" figure for years of 1987 was $587.68.

The difference was $1695.48 minus $587.68 is $1107.80.

Because of the assignment of the possible use of premesis as "APPROVED on 1-30-75, by S.Kawakami" of the Bd. of W.S., the DOWNZONING has taken place. The Dep. Corp. Counsel, Diane Kawauchi has ADMITTED ACKNOWLEDGEMENT but will not pay this amount, till the case is finished.

The Law allows payment in 3 years but it must be paid without pre-

judice.

The Assessor Wayne Kaneko insisted that there was no exemption to this case. On TRIAL of 1-29-88, in the presence of Judge Klein he stated that of several claims that, was requested by Petitioner, that the "No Pass Zone" in the Residential required 50% and he did obtain same. He also required payment for the Water-easement, and did obtain 15% exemption for use of the water-easement, but none for the appurtenance.

The Tax-VALUATION for 1987 as Assigned was $213,664. With the exemptions, it was brought down to $88,677.

"The Court" assigned 1987, as Val. $89,586, for a tax of $293.84, every 6 months.

V. REASONS FOR CONSPIRACY, in tort: From 1975, without notification by law, every official "DOWNZONING" was done by law, through the Ord. but it injured Petitioner. Ord. 82-62 did finalized "DOWNZONING" by ordinance, but after the fact no return of Refund was made when

the Law called for same. In after the fact, the "Compromise" by Law under the Revised Ordinance, the money should have been returned without prejudice, but it never was. It was acknowledged by the Dep.Corp.Counsel D. Kawauchi and yet it was not returned without prejudice, as required by Law. The Assessor then, UPZONED a portion of the property, and gave an excessive VALUATION. He was informed that NO EXEMPTION was made, and with this knowledge a T.A.C.#2485 extended 2-exemptions of 15% and 50% and the cost of $213,564 was brought down to $89,586 by the Court, in Trial of 1-29-88.

The "Court" assessment of $89,586 for 1987 Valuation, tax at $293.84, did not begin at 1987 as assigned.

The Budget Request under Ord.86-66 for a pumphouse and sewage-line in the Sunset View Lots area was discontinued under Affidavit by Chief George Uyema, as the

request though written in 1986, ended in 1988, according to the revised ordinances by the Dep. Corp. Counsel. It was written by the Board of Water Supply and the Approval of 1-30-75 by S. Kawakami, was extended to Owner -Petitioner in October 1989.

VI. QUESTIONS OF CONSPIRACY

1. Was Petitioner's explanation in ERROR?

2. Was "DOWNZONING" initiated to assess the cost under "Eminent Domain" cheaper?

3. It was Petitioner's and wife's position to give the sewar-easement to the C&C of Hon. FREE. Now, with the Discovery, it was allegedly known, and with this "KNOWLEDGE OF DOWNZONING" an error existed. A Damage Suit is now requested for this knowledge to "Downzone" real property 9-9-19: 01, and did so.

4. The assessor gave no exemptions. However, in giving 2 of the several asked, the cost of the exemptions brought the cost of Assigned Valuations down.

Why was it irresponsible to give exemptions, when required?

5. "the Court" gave an amount of $293.84, every 6 months, in taxes as assigned for 1987. Why was it necessary to extend $700.82 due every 6 months, to the 2nd half, when the Court did not extend the Assessor's amount, but made a 1987 Val. of $89,586?

6. Magistrate Conklin on May 26, 1989 gave word that Settlement or Status Conference shall be held on July 28, 1989, and gave a paper stating "Motions (other than motions under Rules 26-37) filed by " This is Federal Rules on Civil Proced. Rule 26 makes possible the interview of those involved. Under Exhibit "B" Civ.89-00858 -DAE a summary judgment is then requested to Rules 12, 41 and 56, Fed.Rules of Civ. Procedure. That, the "ex parte" ruling does not give rise to exceed Rule 26 as mentioned above. Without the purchase of cost, does Petitioner

have to relinquish his RIGHTS to interview those involved?

7. "DOWNZONING" by ordinances as admitted by Dep. Corp. Counsel and "UPZONING" partially by Assessor, with knowledge of exemptions to create more payments for Petitioner, and misplacement of funds for Petitioner to make more payments, though Legal it may seem, is it right?

8. Tie-in of Ord. 86-96, by Ord. 85-46, 81-79, & Ord. 82-62. Tie-in of Ord. 86-96, by Ord.86-133 to 82-62 and to 81-79, is an ex post facto law violation. Ord. 86-96 is a Misdemeanor. A law was violated in that Ord. 86-96 made 9-9-19: 01 a violation with slopes on property against Ord. 3234 a misdemeanor, effective since 1969. Can the "downzoning" take effect with the ex post factor of the U. S.Constitution in place?

VII. ARGUMENT

Without notification, and without informing Petitioner after the fact PERMIT was DENIED in October 1983. That, the R-3 Residential as bought was now a P-1 PRESERVATION. A timely motion was initiated for a Small Claims Court claims, but Jurisdiction was established that - on July 1, 1984 to June 30, 1985, The preservation property was now taxed at $94.77 every 6 months. Ord. 82-62 changed on Dec. 23, 1982 from Residential to Preservation. Advised to give same taxes, $261.97 was taxed--though, REFUND was not given. On July 1, 1984 to June 30, 1985, the jurisdiction given to the Small Claims Court did give a Valuation of $28,078 and a tax of $94.77 every 6 months. For July 1, 1983 to June 30, 1984, Assessor gave same Val. and Tax of $86,209 Valuation and Tax of $303.89. With knowledge of taxes, no effort made to notify Petitioner.

Petitioner kept paying the Taxes as due, until notified by the Land

Use Division in October 1983, that the premises were Preservation. Complaint that at least 1-house Permit could be obtained, was refused. Discovery: In the summary Judgment Trial of 1-15-88, Dep. Corp. Counsel D. Kawauchi did mention that the government acknowledged the error, and that the money will be refunded but refused to do so when informed that the money will be returned without prejudice. The Law also requires money be returned without prejudice within 3 years. With knowledge, and the approval of 1-30-75 by the B.W.S. that took place, and finally given up on Affidavit of George Uyema that the pumphouse and sewage-line was discontinued on Nov. 1989. At this time, he also gave the drawing with approval of S.Kawakami.

Assessor was informed that the exemptions are missing in Trial of 1-29-88. He stated he did not know and so discarded things

he felt should be excused. With 2 exemptions as given at Trial of Civ. T.A.C.#2485, 1-29-88, the 1987 assignment of $213,664 came down to $89,586 by the Court, for Valuations, and I believe the Assessor's Tax was $700.82 and the Court's I believe was taxed at $293.84. The taxes were high indeed.
Though the Assessor's bid for 1987 was timely, it had no bearing as the Court's decision came into the picture.

VIII. REASONS
The granting of a writ of certiorari will receive the correction of this case.
IX. CONCLUSION
If the corrections as due is made, then, there will be no need to make complaints.
It is hoped that the City and County Government of Honolulu, a corporation, admits to the people of Honolulu of the 1st. District, that there be no need for a writ of mandamus, as they will do it

themselves.
That, the APPURTENANCE not registered properly be correctly stated if discontinued that, within 6 mos. a notice be given, and all property belonging to the government be then removed, with PENALTY, of $500 each month if not removed. That, W-3 work sheet of the BWS be inserted to indicate that an 8 inch cast iron pipe is submitted as the Land Court desires. And, also that the Water-easement should have a duplication given to GRANDTOR AND GRANDTEE, with the third party ownership of BWS easement and INDENTURE lease for 99 years. That on the 98th year a new deed shall be leased for another 99 years. No further water-easement shall be deeded, and no further payment shall be made. However, the appurtenance shall not be changed unless other need is made for other reasons.

That, the State of Hawaii is not sued for the mistakes under Section 101-20 H.R.S. Notify, as notification was not done.

That, the State of Hawaii is not sued for the mistakes of Sec. 46-4 H.R.S. Zoning, that forbids Resolutions prior to 1957.

That, though the agricultural zone in 1942, was declared an AA zone. In 1949, the Sunset View Lots were made and Contracted as 56 lots and a 40 feet driveway. The taxes were paid as AA zones, and in 1969 it was designated as R-3 residential zoned lot, and under Tax Appeal Court designation that it was legal under Civ. #1798, Agreed-statement was admitted, and concluded in 1979. The Assessor's report shows a tax of Residential was taken from 1949 to 1982.

That, Damage Suit shall be disposed as agreed.

Dated: March 22, 1991, Honolulu, Hawaii.

Harvey H. Toda pro se
for Petitioner
1363 Hoowali Street
Pearl City, HI. 96782
(808) 456-1328

APPENDIX

FILED
Jan.23, 1991
Cathy A. Catterson,
Clerk, U.S. Court of
Appeals

Not for Publication
U.S. Court of Appeals
for the Ninth Circuit
No. 90-15483
D. C. No. CV-89-00858-DAE
MEMORANDUM*

HARVEY H. TODA, Plaintiff-Appellant,
v.
CITY AND COUNTY OF HONOLULU, A CORPORATION, Defendant-Appellee.

Appeal from the United States District Court for the District of Hawaii
David A. Ezra, District Judge, Presiding
Submitted Dec. 7, 1990* *
Before: FARRIS, HALL, and KOZINSKI, Circuit Judges.

This action presents the same issues and parties as those raised in D.C. No. CV-86-1069. The district court entered summary judgment in favor of Appellee, the Ninth Circuit Affirmed, and a peti-

tion for a writ of certiorari to the United States Supreme Court was denied. The instant case, D.C.No. CV-89-0858-DAE involves the same facts, cause of action, and parties as were involved in the previous litigation. As such, the district court appropriately granted summary judgment based on the doctrines of res judicata and collateral estoppel. See Wight v. Montana-Dekota Utilities Co., 299 F.2d 470, 477 (9thCir. 1962), cert, denied. 371 U.S. 962 (1963); Hubicki v. AFC Industries, 484 F.2d 519, 524 (3d Cir. 1973).

AFFIRMED.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 34-4 and Fed. R. App. P.34(a).

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CIVIL NO. 89-00358 DAE
MOTION FOR SUMMARY JUDGMENT
AND FOR DISMISSAL OF
COMPLAINT

HARVEY H. TODA, Plaintiff,

vs.

CITY AND COUNTY OF HONOLULU,
Defendant.

MOTION FOR SUMMARY JUDGMENT
AND FOR DISMISSAL OF COMPLAINT

Comes now Defendant CITY AND COUNTY OF HONOLULU (hereinafter "Defendant"), by and through its attorneys, RICHARD D. WURDEMAN, Corporation Counsel, and MARIA C. AVINANTE-TANAKA, Deputy Corporation Counsel, and moves this Honorable Court for summary judgment and for dismissal of the Complaint filed herein pursuant to Rules 12, 41 and 56 of the Federal Rules of Civil Procedure, the memorandum and

affidavit in support of said motion filed herein, and upon such further evidence and argument as may be presented upon a hearing on this motion.

DATED: Honolulu, Hawaii, Jan. 5, 1990.

RICHARD D. WURDEMAN
Corporation Counsel

By S/S (copy)
MARIA C. AVINANTE-TANAKA
Dep.Corp.Counsel
Attorneys for Def.

In the United States District Court
for the District of Hawaii

Civil No.____

_____

vs.

_____

_____

SCHEDULING CONFERENCE ORDER

Pursuant to L.R. 235-4 and the Scheduling Conference held in the above case, the following scheduling Conference Order is hereby entered.

.... _____

.... _____

.... _____

.... _____

.... _____

Motions (other than motions under Rules 26-37) filed by May 26,1989

....

....

.... _____

(Conklin)
U. S. Magistrate

Approved as to form:

_____

_____

In the Hawaii State transcript 1-15-88 Summary Judgment de novo case by Judge Klein.

Tax Appeal Court case 2485:

Page 20, line 19 and 25: Ms. Kawauchi, stated: "(partial) we acknowledged the error.

We feel he should be refunded the taxes in accordance with the down zoning and change. But the City is not going to do it right now to have the case pending in the Tax Appeal Court."

U.S. CONSTITUTION (partial of)

1. Amd. 1
   "Freedom of Speech"
2. Amd . 7
   "Rights to "Trial by Jury"
3. Amd. 14
   "Due process and equalization"

#4 AMD.5 (SEE C-4) HH.

Hawaii Revised Statutes

1. Section 101-20 Notify
   ties-in with U.S.Const. Amd.14
2. Section 46-4 Zones
   (cannot tack-in prior cases,
   past and before 1957)

1st District, A Corporation,
City and County of Honolulu,
Revised Ordinances:

1. PUBLIC HEARINGS: Must notify
   those involved. People not
   involved, by newspaper notes.
2. Resolution 81, Sunset View Lots
   1942 change of lot areas.
   Sunset View Lots, contracted,
   from agr. lots to 56 lots
   with 40 feet driveway of "AA"
   zone. Since 1949, TAXES PAID,
   for residential lots till 1982
   Ord. 82-62, Dec. 23, 1982.

R-3 residential designation from 1969 CZC Sec. 3234 Rev.Ord. a misdemeanor.

3. Art. 10, Exemptions, R.O. Sec. 8-10.1 Claims Exemptions; (b) Claim for exemption once allowed shall have continuing effect until: (2) the assessor voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided for by this chapter) that the claim or Claims on file will be voided on a certain date, not less than thirty days after such notice;
Also, unwritten exemption of, Sec. 8-7.1 rev.ord. (e).... <u>easements and appurtenances</u>, Water-easement registered with the Bureau of Conveyances, but undocumented APPURTENANCE in violation of the Rule 14 Land Court rule to notify the APPURTENANCE, and no letter of completion, from JOB ASSIGNMENT.

4=

Blacks Law Dictionary (partial of)

CONSPIRACY

A combination or confederacy between two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

....

Civil Conspiracy: The essence of a "Civil Conspiracy" is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff. .... Wharton Rule.

Blacks Law Dictionary
5th Edition
by the Pub.Ed.Staff
St. Paul, Minn.
West Pub. Co.
1979

Pages 280, 281

STATEMENT OF RELATED CASES

Under Amd. 5, U.S.Constitution, private property has been taken for "DOWNZONING" of slope of land from residential to Preservation zones. The Board of Water Supply is a Semi-legislative body within the City & County of Honolulu, a corporation. The B.W.S. has persons as a board, to run its work. The BWS in 1-30-75, S.Kawakami signing the APPROVAL, initiated the possible use of land for a pumphouse and sewage line. The OWNERS and Petitioner was never notified. Without notification, as required under Amd. 5, U.S.Con. Affidavit of R.Yamashita in Nov. 1989 stated that because of the slopes and no mention of Notify no public hearing was made, and Ord. 81-79 was consumated, without a misdemeanor as required by law. Ord. 82-62, was also then Dec.23, 1982, enacted. Residential taxes were still taken, till June 30, 1984, when the Bd. of Review, Small Claims Crt. changed the taxes to PRESERVATION.

CERTIFICATE OF SERVICE

I, Harvey H. Toda hereby delivers 3-copies of 9th Cir. HHT Court of Appeals under 90-15483 Conspiracy, in tort for an application for a writ of certiorari and proof of service, to:

Ronald Mun
Corporation Counsel
Diane Kawauchi
Deputy Corporation Counsel
Counsel and Attorneys for:
CITY and COUNTY of HONOLULU,
a corporation
Honolulu, Hawaii 96813

R.Mun--Phone (808) 523-4115
D.Kawauchi--Ph,(808) 527-5778

Dated: March 25, 1991, Honolulu, Hi. HHT

Harvey H. Toda pro se
for Petitioner

Proof of Service
RECEIVED BY: Diane T. Kawauchi
Print Name : Diane T. Kawauchi
Date : 3/25/91
Position: Deputy Corporation Counsel